

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ZHONG FA QIN, on behalf of himself  
and others similarly situated,

Plaintiff,

**NOT FOR PUBLICATION**

**MEMORANDUM AND**  
**ORDER ADOPTING**  
**REPORT AND**  
**RECOMMENDATION**

15-CV-6399 (KAM)

-against-

SENSATION NEO SHANGHAI  
CUISINE, INC., WEI CHUN GAO,  
ZHONGZIA SHEN, "JOHN" ZHANG,

Defendants.

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**MATSUMOTO, United States District Judge:**

Plaintiff Zhong Fa Qin brought this Motion for Default Judgment ("Motion") against Defendants Sensation Neo Shanghai Cuisine ("Corporate Defendant"), Wei Chun Gao ("Gao"), Zhongxia Shen ("Shen"), and "John" Zhang ("Zhang"), on December 8, 2017 seeking damages under the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, and the New York Labor Law ("NYLL"), N.Y. Lab. Law §§ 650 *et seq.* (See Am. Compl., ECF. 17.)

On August 9, 2018, Magistrate Judge Peggy Kuo issued a Report and Recommendation granting Plaintiff's Motion for Default Judgment. For the reasons stated below, the court

substantially adopts the R&R with modifications only as to the amount of attorneys' fees and amount of prejudgment interest awarded.

### **LEGAL STANDARD**

A district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge" in a Report and Recommendation. 28 U.S.C. § 636(b)(1)(C). Where no objections are made, the court need only review for clear error on the face of the record. *See Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *Baptichon v. Nev. State Bank*, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), *aff'd*, 125 F. App'x 374 (2d Cir. 2005).

### **DISCUSSION**

The court assumes familiarity with the facts of the instant action as set forth thoroughly in Magistrate Judge Kuo's R&R. (See ECF No 50, R&R, at 1-3.)<sup>1</sup> The R&R recommends that default judgments be entered against defendants Sensation Neo Shanghai Cuisine, Wei Chun Gao, Zhongxia Shen, and John Zhang. (*Id.* at 1.) Additionally, the R&R recommends that plaintiff be awarded **\$42,012.58** in damages comprised of: **\$16,006.29** in unpaid minimum, overtime, and spread-of-hour wages; **\$16,006.29** in

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<sup>1</sup> Citations to page numbers refer to those numbers assignment by the Electronic Filing System ("ECF").

liquidated damages; and **\$10,000** in statutory damages. (*Id.* at 10-16, 21.) The R&R also recommends that Plaintiff be awarded **\$11,521.10** in attorneys' fees and **\$1,039.93** in costs, and prejudgment interest of **\$7836.80**, plus **\$3.95** per day to the date of judgment. (*Id.* at 16-21.)

Upon clear error review, the court substantially adopts Judge Kuo's R&R with modifications as to the attorneys' fees and costs award, and prejudgment interest. Without modification, the court adopts the recommendation to grant plaintiff's motion for default judgment with respect to defendants Sensation Neo Shanghai Cuisine, Wei Chun Gao, Zhongxia Shen, and John Zhang. (*Id.* at 1.) As to damages, the court adopts without modification the recommendations regarding statutory penalties for unpaid minimum wage, unpaid overtime, and spread of hour wages, liquidated damages and statutory damages. (*Id.* at 10-16.) Specifically, the court adopts without modification the recommendation that plaintiff be awarded **\$16,006.29** in unpaid minimum, overtime, and spread-of-hour wages; **\$16,006.29** in liquidated damages; **\$10,000** in statutory damages; and **\$1,039.93** in costs. (*Id.* at 10-16, 20.)

The court adopts, with modifications to the amounts, the recommendations that plaintiff be awarded **\$11,521.10** in attorneys' fees, and prejudgment interest of **\$7836.80**, plus **\$3.95** per day to the date of judgment. (*Id.* at 16-20.) Based

on the calculations set forth below, the court modifies the amounts to be awarded. The court employed the same method of calculation as was correctly used in the R&R to calculate prejudgment interest and attorneys' fees. (*Id.* at 15-20). Based on its independent calculations of attorneys' fees and prejudgment interest, the court has reached a different result than the R&R.

The court modifies the R&R's recommendations regarding the final amount of prejudgment interest ordered. The court adopts and applies Judge Kuo's recommendation that prejudgment interest be calculated at a rate of nine percent per annum from March 15, 2013 to the date judgment is entered (*id.* at 21-22 (citing C.P.L.R. § 5004)), but modifies the recommended award of interest to correct a mathematical error in the calculation of interest from March 15, 2013 through the date of this decision.

Judge Kuo determined the award of prejudgment interest by first calculating interest on the \$16,006.29 in actual damages awarded plaintiff on his unpaid minimum wage, overtime pay and spread of hours claim at the statutory rate of 9% per annum, which, rounded to the second decimal place is \$3.95 per day. (*Id.* at 16.) Judge Kuo determined that prejudgment interest should be awarded from March 15, 2013, which represents the midpoint between September 1, 2012, when plaintiff first was employed by defendants and September 24, 2013, the final date of

plaintiff's employment with defendants. (*Id.* at 2, 20.) Judge Kuo then multiplied \$3.95 by the number of days from March 15, 2013 to the issuance of the R&R in accordance with the R&R. Judge Kuo prescribed an additional \$3.95 a day in interest until the date of judgment. (*Id.* at 20.) Upon independent recalculation of the prejudgment interest in accordance with the formula set forth, the court finds a total award of prejudgment interest of \$8,018.50 is proper for the period from March 15, 2013 through the date of this decision.

Judge Kuo determined the award of attorney's fees by first determining a reasonable hourly rate for the attorneys who billed time on the instant case. Their hourly rates were established as follows: \$375 per hour for attorney John Troy, \$150 per hour for attorney George Kibum Byun, \$150 per hour for attorney Joseph Myers, \$100 per hour for attorney Aaron Schweitzer, \$80 per hour for legal fellow Tracy Ann Ulett, \$75 per hour for legal assistant Bella Yingchu Ho, \$75 per hour for intern Thomas Lindeman, and \$70 per hour for office assistant Bingyu Huang. After excluding hours it found excessive, redundant and otherwise unnecessary, Judge Kuo found that counsel billed the following number of hours: 23.63 hours of compensable time for Troy; 0.5 hours for Myers; 5.31 hours for Byun; 2.75 hours for Schweitzer; 3.47 hours for Ulett; 1.4 hours

for Lindeman; 1.17 hours for Ho; 0.63 hours for Huang; and an additional 14.27 hours at a paralegal rate of \$70 an hour.

The court adopts the hourly rates for the attorneys and support staff as established by Judge Kuo as follows: \$375 per hour for attorney John Troy, \$150 per hour for attorney George Kibum Byun, \$150 per hour for attorney Joseph Myers, \$100 per hour for attorney Aaron Schweitzer, \$80 per hour for legal fellow Tracy Ann Ulett, \$75 per hour for legal assistant Bella Yingchu Ho, \$75 per hour for intern Thomas Lindeman, and \$70 per hour for office assistant Bingyu Huang. Upon independent recalculation of the number of hours billed by each attorney and support staff multiplied by the stated billable rates, in accordance with the formula set forth, the court finds an award of attorney's fees of \$10,678.60 is proper. This represents billable hour payments in accordance with the rates established by Judge Kuo, allotted as follows: 22.05 hours of compensable time for Troy; 5.21 hours for Byun; 0.5 hours for Myers; 1.1 hours for Schweitzer; 3.47 hours for Ulett; 1.4 hours for Lindeman; 1.17 hours for Ho; 0.63 hours for Huang; and an additional 13.27 hours at a paralegal rate of \$70 an hour. The hours included in the court's calculations are set forth in the following charts.

<b>John Troy hours billed at regular rate</b>		
<b>Date</b>	<b>Description</b>	<b>Hours</b>
10-13-15	Initial Telephone Conference with Plaintiff(s)	0.30
10-17-15	Draft Settlement Letter to Defendants	0.60
10-17-15	Meet with Client(s) - Intakes	2.20
10-17-15	Prepare and Sign Retainer with Client(s) - retainer	0.90
10-18-15	Case Timeline: State of Limitations, Plaintiff(s), and Corporate Defendant(s)	0.50
10-18-15	Cast Location Entry: Site Visit Preparation, Miles from Office	0.50
11-03-15	Draft the Complaint	4.50
11-04-15	Research: ABC Board on Liquor Licensese	0.40
11-04-15	Research: Lexis Nexis/Legal/Others??	1.30
11-04-15	Research: Search Corp & Biz Entity Database	0.50
11-04-15	Draft Damages Calculation Chart	1.40
11-04-15	Research: DMV/Vehicle Plate Number??	0.40
11-07-15	Meet with Client – Damages Calculations	0.80
11-08-15	Review the Complaint	0.80
11-08-15	Finalize the Complaint, Summons and Civil Cover Sheet USDC	0.90
11-08-15	Meet with clients to revise Complaint	1.20
11-09-15	Review Magistrate Judge Individual Practices	0.50
11-09-15	Review District Judge Individual Practices	0.50
11-09-15	Review the Court Notice with AP 85 Consent to a Magistrate Judge	0.20
11-11-15	Draft, Print and Mail Notice of Lawsuit and Request for Waiver of Service of Summons	1.75
11-14-15	Revise Damages Calculations Chart(s)	0.20
06-09-16	Draft and File Request for Certificate of Default	0.40
12-09-16	Draft Affirmation support Request for Default	0.80
06-21-18	Draft Notice of Voluntary Dismissal	0.50
<b>TOTAL</b>		<b>22.05</b>

<b>George Kibum Byun's hours billed at regular rate</b>		
<b>Date</b>	<b>Description</b>	<b>Hours</b>
11-10-15	Draft, Print and Mail Notice of Lawsuit and Request for Waiver of Service of Summons	2.50
12-02-15	Research on def ppt/business	0.87
12-02-15	Send service request on corp def Sensation Neo Shanghai to Alexander Poole	0.42
12-02-15	Prepare/Fax NYS COI	0.42
12-07-15	Draft POS	1.00
<b>TOTAL</b>		<b>5.21</b>

<b>Joseph Myers' hours billed at regular rate</b>		
<b>Date</b>	<b>Description</b>	<b>Hours</b>
06-06-16	Review Motion for Default Judgment	0.50
<b>TOTAL</b>		<b>0.50</b>

<b>Aaron Schweitzer's hours billed at regular rate</b>		
<b>Date</b>	<b>Description</b>	<b>Hours</b>
04-25-17	Draft Request for Certificate of Default	0.20
04-25-17	Review Judge's OTSC for Default	0.10
04-25-17	Draft affirmation support Request for Default	0.80

<b>TOTAL</b>	<b>1.10</b>
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<b>Tracy Ann Ulett's hours billed at regular rate</b>		
<b>Date</b>	<b>Description</b>	<b>Hours</b>
10-26-16	Confer with Court and File Corrected POS	0.25
12-13-16	Re-search: Lexis Nexis/Legal/Others	1.30
12-14-16	Amended Complaint	1.00
12-14-16	Summons	0.17
12-14-16	Discussed predisposition of case w/ lead attorney	0.25
12-20-16	Prepared Service	0.25
01-11-17	Reviewed Case	0.25
<b>TOTAL</b>		<b>3.47</b>

<b>Thomas Lindeman's hours billed at regular rate</b>		
<b>Date</b>	<b>Description</b>	<b>Hours</b>
06-21-17	Update request for default and related documents, file documents	1.00
06-23-17	Update and file clerk's default for the second time	0.40
<b>TOTAL</b>		<b>1.40</b>

<b>Bella Yingchu Ho's hours billed at regular rate</b>		
<b>Date</b>	<b>Description</b>	<b>Hours</b>
05-04-17	Download [20-20-5]	0.42
07-25-17	Revise Damages Calculation Chart(s)	0.75
<b>TOTAL</b>		<b>1.17</b>

<b>Bingyu Huang's hours billed at regular rate</b>		
<b>Date</b>	<b>Description</b>	<b>Hours</b>
08-15-17	Scan & Email proof of Service	0.20
08-28-17	Scan & Email Proof of Service	0.43
<b>TOTAL</b>		<b>0.63</b>

<b>Paralegal Hours</b>		
<b>Date</b>	<b>Description</b>	<b>Hours</b>
10-17-15	Set Up the Text Message, WeChat & Line	1.40
10-18-15	Create Binder, Set Up/Key in Database	1.30
10-17-15	File the Complaint, Summons & Civil Cover Sheet USDC	3.50
11-10-15	2 copies AO399 Waiver of Service Form to each Def .4d	1.60
11-11-15	ECF Mail Notice of Lawsuit and Request for Waiver of Service of Summons	0.50
12-09-15	ECF Proof of Service	0.40
12-09-15	File POS	0.67
12-10-15	Re-draft POS	0.50
12-10-15	Re-file POS	0.50
12-02-15	Prepare Copies to Serve Summons and Complaint	0.40
07-25-17	UnAnswer Default Serve def CorpFax	0.50
07-25-17	UnAnswer Default Serve def D Email	0.50
07-25-17	UnAnswer Default Serve def D Address	0.50
07-25-17	UnAnswer Default Serve def CorpAddress	0.50
07-25-17	UnAnswer Default Serve def CorpEmail	0.50
<b>TOTAL</b>		<b>13.27</b>



The court adds its independently calculated award of attorney's fees of \$10,678.60 to the award of \$1,039.93 in costs. Accordingly the plaintiff is awarded \$11,718.53 in attorneys' fees and costs.

### **CONCLUSION**

For the reasons stated in the R&R and above, plaintiff's motion for default judgment is granted with respect to defendants named herein. Plaintiff is awarded a total amount of \$42,012.58 as follows: (1) \$16,006.29 in unpaid minimum wage compensation, overtime and spread of hours compensation (2) \$16,006.29 in liquidated damages; (3) \$10,000 in statutory damages. Plaintiff is also awarded \$11,718.53 in attorneys' fees and costs and prejudgment interest at a nine percent annual rate on the total compensatory damages, of \$8,018.50 for the period from March 15, 2013 to the date of this decision.

The Clerk of Court is respectfully directed to enter judgment accordingly, close the case, mail *pro se* defendants a copy of this memorandum and judgment, and note service on the docket.

**SO ORDERED.**

Dated:      October 4, 2018  
             Brooklyn, New York

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/s/  
**Hon. Kiyo A. Matsumoto**  
United States District Judge